IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 559 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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IBRAHIM HAJI AKBARALI GHASWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 559 of 2001

MR CL SONI for Petitioner No. 1-2

PUBLIC PROSECUTOR for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/08/2001

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. H.L.Jani, learned APP appearing for the respondents. In the facts and circumstances of the case, the matter is taken up for

final hearing today.

Heard learned advocate Mr. C.L. Soni for the petitioner and Mr. H.L. Jani, the learned APP for the respondents. In this petition, the petitioner is challenging two orders. The first order challenged by the petitioner is dated 15.3.2000 passed by the Dy. Conservator of Forests, Chhota Udepur and the second order challenged by the petitioner is dated 25.5.2000 passed by the Sessions Judge, Baroda in appeal no. 21 of 2000.

2. Learned advocate Mr. Soni appearing for the petitioner has challenged both the orders inter alia on the ground that the notice dated 5.10.1999 has been given by the Range Forest Officer who is not an authorized officer and no reasonable opportunity has been given to the petitioner prior to the passing the orders which are adverse to the petitioner by the Deputy Conservator of Forests, Chhota Udepur. He has submitted that all the extracts from the village form 7/12 were produced by the petitioner alongwith the reply to the notice dated 5.10.1999 but the said documents were not considered by the authorized officer and the same were ignored by the concerned authority. According to him, the order passed by the lower authorities are bad in law and there was no discussion about the objection raised by the petitioner before the concerned authority and that the petitioner was not given any hearing and no notice has been given as required under section 61B of the Indian FOrests Act and, therefore, entire order passed by the Deputy Conservator of Forests is bad in law and without jurisdiction.

As against that, learned APP Mr. Jani appearing for the respondents has submitted that according to the order, two notices were served upon the petitioner. The first notice served upon the petitioner is dated 23.9.1999 and thereafter, the petitioner gave application dated 27th September, 1999 which was replied by the authority concerned on 8th October, 1999 and prior to that, one another notice was given to the petitioner calling upon the petitioner to submit explanation as well as request to produce necessary documents in respect of the defence of the petitioner. The notice dated 5th October, 1999 was also served upon the petitioner and, therefore, there was sufficient compliance of section 61B of the Forests Act and, therefore, the petitioner was given enough and sufficient opportunity and after considering the objections raised by the petitioner in his reply, the order has been passed by the competent

authority namely authorized officer. He has also pointed out that there is no specific provisions under section 61B of the FOrests Act that the notice is also required to be given by the authorized officer. According to him, section 61-B of the Act relates to issuance of the show cause notice before confiscation under section 61-A of the Act. He has submitted that section 61-B provides that no order confiscating any forest produce or tools, ropes, chains, boats, vehicles or cattle shall be made under section 61-A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any. Thus, according to him, section 61-B does not provide for issuance of notice by the authorized officer. Therefore, notice given by the Range Forest Officer is sufficient compliance as required under section 61B of the Act and, therefore, the order passed by the authorized officer is legal and valid order. He has also submitted that the order passed by the Dy. Conservator of Forests dated 5th March, 2000 is speaking order and the concerned authority has discussed entire evidence including the objections raised by the petitioner before the concerned authority. He has further submitted that the appellate authority has also discussed the entire evidence and has considered the objections raised by the petitioner and after considering the objections raised by the petitioner as well as the contentions raised in appeal, has rejected the appeal preferred by the petitioner and, therefore, according to him, there is no error committed either by the authorized officer and/or by the appellate authority and, therefore, the orders impugned in this petition does not require any interference by this Court.

I have considered the submissions made by the learned advocates for the respective parties. I have also considered the order passed by the authorized officer as well as the order passed by the appellate authority namely sessions judge, Baroda in appeal preferred by the petitioner.

As regards the first contention raised by Mr. Soni that as per section 61-B of the Act, notice is required to be given by the authorized officer, relevant provisions of section 61-A and 61-B are required to be reproduced. Section 61-A of the Forest Act reads as under:

"61-A. Confiscation by Forest Officers in certain cases.- (1) Notwithstanding anything contained in the foregoing provisions of this

Chapter or in any other law for the time being in force, where a forest offence is believed to have been committed in respect of any forest produce which is the property of the Central Government, the officer seizing the property under sub section (1) of section 52 shall without any unreasonable delay produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorized by the Central Government in this behalf by notification in the Official Gazette, not being below the rank of an Assistant Conservator of Forest (hereinafter referred to as "the authorized Officer").

(2) Where the authorized officer seizes under sub section (1) of section 52 any forest produce which is the property of the Central Government or where any such property is produced before the authorized officer under sub section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorized officer may whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

(3) Where the authorized officer, after passing an order of confiscation under sub section (2), is of the opinion that it is expedient in the public interest so to do, he may, order the confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sold as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses, relating thereto, shall, where the order of confiscation made under section 61-A is set aside or annulled by an order under section 61-C or 61-D be paid to the owner thereof or to the person from whom it was seized as may be specified in such order."

Section 61-B(1) of the Act is reproduced as under:

"61-B(1) No order confiscating any forest produce

or tools, ropes, chains, boats vehicles or cattle shall be made under section 61A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any.

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if in the opinion of the authorized officer, it is practicable to do so and considering his objections, if any.

(2) Without prejudice to the provisions of sub section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under section 61-A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorized officer that it was used in carrying forest produce without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use."

Thus, bare reading of section 61-B(1) of the Act makes it clear that it provides that no order confiscating any forest produce or tools, ropes, chains, boats, vehicles or cattle shall be made under section 61-A except after notice in writing to the person from it is seized informing him of the grounds on which it is proposed to be confiscated and considering his objections, if any. Thus, notice is required to be issued by the authority but there is no specific provision made similar to section 61A that the order must be passed by the authorized officer. Language similar to section 61-A has not been used in section 61-B(1) of the Act. Therefore, bare reading of section 61-B(1) of the Act would mean that before confiscating any forest produce...., notice in writing to the person concerned is required to be given. Therefore, section 61B(1) does not say that such notice has to be given by the authorized officer like section 61-A which says that the order of confiscation shall be passed by the authorized officer. Therefore, in this case notices dated 23.9.1999 and 5.10.1999 were given to the petitioner calling upon him to submit explanation and submit necessary documents which is sufficient compliance of the relevant provisions

of section 61B(1) of the Act. It is also necessary to note that in the relevant provisions of section 61-B(1) of the Act, nowhere it is mentioned about hearing to such person. It only provides to consider the objections, if any filed by the concerned person. Therefore, considering these relevant provisions of section 61-B of the Act, it is clear that the issuance of notice is condition precedent but it is not provided that such notice has to be issued by the authorized officer before passing the order under section 61-A of the Act. Similarly, as per section 61-B of the Act, the consideration of the objections, if any, is necessary. It does not provide for hearing to the person concerned. In this case, upon perusal of the order passed by the authorized officer, it appears that two notices were given to the petitioner one is dated 23.9.1999 and the another is dated 5.10.1999. It is not the case of the petitioner that such notices were not given to the petitioner but it is the case of the petitioner that the notice were not given to the petitioner by the authorized officer. It is also not in dispute that the objections were submitted by the petitioner in reply to the notice dated 23.9.1999 by filing the reply on 27.9.1999. The petitioner was given another notice dated 5.10.1999 to produce relevant material before the concerned authority. By notice dated 5.10.1999, the petitioner was asked to submit relevant evidence within two days and was also informed to take note that if he will fail to do so, then, the order of confiscation of his goods will be passed. Therefore, upon persusal of the order passed by the authorized officer, and also looking to section 61B of the Act, as per my opinion, there is sufficient compliance of section 61-B of the Act. It is also necessary to note that there is no specific provision in section 61-B for hearing. Section 61-B provides for consideration of the objections if any. In this case, objections were filed by the petitioner and were considered by the authorized officer before passing the order. Therefore, according to my opinion, there is sufficient compliance of section 61-B of the Act. Therefore, it cannot be said that the order passed by the authorized officer Deputy Conservator of Forest, Chhota Udepur is against the principles of natural justice. These aspects were considered by the learned sessions judge in appeal proceedings and after considering these aspects and order passed by the authorized officer and also after considering the provisions of section 61B of the Act, the appeal preferred by the petitioner was rejected by the appellate authority. Therefore, these contentions raised by Mr. Soni are required to be rejected. Same are accordingly rejected.

The next contention raised by Mr. Soni is about non consideration of the village form 7/12 produced by the petitioner for the year 1972 to 1999. Learned advocate Mr. Soni has submitted that the extracts of the village form 7/12 for the year 1972 to 1999 produced by the petitioner before the authorized officer were not considered and were ignored by the concerned authority. According to my opinion, this submission is contrary to the record. If the entire order passed by the Deputy COnservator of Forest is perused, it would appear that the documents produced by the petitioner were considered by the authority in detail and after considering the said documents produced by the petitioner, the concerned authority has come to the conclusion that these documents are false and fabricated documents and, therefore, specific direction has been issued in the order dated 15th March, 2000 to file criminal prosecution against the petitioner for production of such false and fabricated documents and, therefore, the documents which were produced by the petitioner namely village form 7/12 for the year 1972 to 1999 were considered by the authority and it is incorrect to say that the same were not considered but ignored by the authority. Therefore, according to my opinion, this contention raised by Mr. Soni about non consideration of the extracts of village form 7/12 for the year 1972 to 1999 is contrary to the record and same is required to be rejected. Same is accordingly rejected.

The next contention raised by Mr. Soni is that the original owner documents namely extracts of village form 7/12 only for the year 1995; 1996; 1997. The original owner has not produced the extracts of village form 7/12 from 1972 to 1991. As against this submission, two aspects were considered by the authority that the statement which was made by the original owner before the concerned authority that in the field which was sold to the petitioner on 3.5.1999, there was no tree of Khair in the said field and even looking to the extract of village form 7/12, there was no entry and there was no record with the talati wherein said entries were made by the concerned authority. Therefore, the authority has considered all the relevant documents and has not ignored even single documents while passing the impugned order. It is also necessary to note that the Government circular which was relied upon by the petitioner dated 25.9.1972 has also been rightly considered by the authorized officer and therefore considering all these aspects of the matter, as per my opinion, there is no error committed by the authorized officer while passing the

order in question. The order passed by the authorized officer was right, legal and valid order and the learned Sessions Judge, Baroda was right in rejecting the appeal after perusing the order passed by the authorized officer. Learned advocate Mr. Soni has relied upon the decision of the division bench of the Bombay High COurt in case of Anandkumar Raghunath Ray versus State of Maharashtra and another reported in AIR 1989 293 relevant para 9. I have considered the decision relied upon by Mr. Soni. I have also considered para 9 of the said decision wherein after issuing show cause notice, it was held that the person is entitled to reasonable opportunity to raise his objections and to put forward his case. In the said case, such opportunity of filing of objection was denied to the appellant. In this case, it is not the case of the petitioner that he was not given an opportunity to submit his objection. It is not his case that he was deprived of his right to file the objections. Looking to the facts on record, the objections were filed by the petitioner and were considered by the authority before passing the impugned order. Two notices were issued by the authority dated 23.9.1999 and 5.10.1999 and thereafter after considering the objections raised by the petitioner, the impugned order was passed by the authority and, therefore, it cannot be said that the petitioner was not given opportunity to file his objections. Therefore, in the facts and circumstances of the case, the decision cited by Mr. Soni is not applicable.

No other contention was raised by Mr. Soni. He has not been able to point out any infirmity in the orders impugned herein. He has also not been able to point out that the findings given by the authorities below are perverse. No jurisdictional error has been pointed out.

Therefore, according to my view, there is no substance in the petition filed by the petitioner.Same is, therefore, rejected. Rule is discharged.

6.8.2001. (H.K. Rathod,J.)

Vyas